

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
WACO DIVISION

3 MIDAS GREEN TECHNOLOGIES, ) Docket No. WA 22-CA-050 ADA  
LLC )  
4 )  
vs. ) Waco, Texas  
5 )  
RHODIUM ENTERPRISES, )  
6 INC, ET AL ) October 6, 2023

TRANSCRIPT OF DISCOVERY HEARING VIA VIDEOCONFERENCE  
BEFORE THE HONORABLE ALAN D. ALBRIGHT

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25   Proceedings reported by digital sound recording,  
   transcript produced by computer-aided transcription.

10:32:27 1 THE COURT: Good morning, everyone.

10:32:28 2 Jen, would you call the case, please.

10:32:30 3 THE CLERK: Civil action in Case 6:22-CV-50,

10:32:34 4 Midas Green Technologies, LLC vs. Rhodium Enterprises,

10:32:38 5 Incorporated. Case called for a discovery hearing.

10:32:41 6 THE COURT: Announcements from counsel, please.

10:32:44 7 MR. SMITH: Your Honor, for Plaintiff Midas

10:32:46 8 Green, Michael Smith, Joe Thomas and Henry Pogorzelski.

10:32:48 9 Mr. Thomas will be speaking for us and we're ready to

10:32:52 10 proceed.

10:32:54 11 MS. MOORE: And Ashley Moore with Aaron Plessset

10:32:57 12 from Michelman Robinson on behalf of third-party GRC.

10:33:03 13 MR. UNDERWOOD: Good morning, your Honor.

10:33:04 14 This is Travis Underwood, Elizabeth Brannen and

10:33:07 15 Peter Brody on behalf of the defendants and we're ready.

10:33:10 16 THE COURT: Okay. Give me just one second here.

10:33:23 17 Okay. I'll hear from the plaintiff, please.

10:33:27 18 MR. THOMAS: Your Honor, we've summarized our

10:33:29 19 positions, I think, accurately in the submission. What's

10:33:35 20 important to us is getting specific detail on the GRC Gen

10:33:41 21 1 products. They're alleged to be prior art invalidating

10:33:45 22 our patent and they're also alleged to be an acceptable

10:33:48 23 non-infringing substitute by Rhodium. Same issues for Gen

10:33:54 24 2; they're alleged to be an acceptable non-infringing

10:33:57 25 substitute. And we have the patent application that was

10:34:00 1 filed by GRC and under the Gen 2 product, which was  
10:34:08 2 published on May 12th, 2022, and specifically at pages 6  
10:34:15 3 and 7 are drawings that show strong evidence of copying of  
10:34:22 4 key features of our patented claims, including the clear  
10:34:27 5 -- the weir, the plenum, the reservoir, the cable  
10:34:32 6 management system, among other things.

10:34:34 7 So we have strong evidence of copying or any in  
10:34:37 8 existence by virtue of a patent application GRC filed with  
10:34:41 9 respect to this Gen 2 product and as noted before, it is  
10:34:45 10 alleged --

10:34:45 11 THE COURT: Tell me what you want.

10:34:49 12 MR. THOMAS: We'd like just an order to compel  
10:34:51 13 production of the Gen 1 drawings, designs and  
10:34:54 14 specifications.

10:34:56 15 THE COURT: Have they not done that?

10:34:58 16 MR. THOMAS: No.

10:35:00 17 THE COURT: Have they said there aren't any?  
10:35:01 18 They've looked for them? I mean, y'all are here on a --  
10:35:06 19 you've asked for something that is relevant and they've  
10:35:09 20 just told you they're not giving them to you.

10:35:12 21 MR. THOMAS: Yes.

10:35:13 22 THE COURT: Okay. Well, let's hear from them.

10:35:15 23 MS. MOORE: Yes, your Honor. Ashley Moore on  
10:35:17 24 behalf of GRC.

10:35:18 25 I'll start with the Gen 1 documents, which is RFP

10:35:22 1 No. 1 in dispute here. Setting aside the fact that we  
10:35:26 2 very strongly disagree with copying or anything of that  
10:35:29 3 nature, the plaintiffs do have the documents. Rhodium  
10:35:35 4 requested them over a year ago. We produced documents to  
10:35:39 5 Rhodium in compliance with that subpoena and Rhodium has  
10:35:43 6 provided those documents to Midas, the plaintiff in this  
10:35:47 7 action. In addition --

10:35:48 8 THE COURT: Have you provided all the documents  
10:35:50 9 you think are in your custody or control?

10:35:56 10 MS. MOORE: We've complied with what we believe  
10:35:57 11 to be relevant that is not already publicly available. We  
10:36:00 12 do not think a third party, GRC, should --

10:36:02 13 THE COURT: I got it. So let me hear from  
10:36:04 14 plaintiff's counsel. Counsel for defendant says they've  
10:36:08 15 produced them.

10:36:10 16 MR. THOMAS: No, they have not produced them.  
10:36:11 17 They've produced --

10:36:13 18 THE COURT: Why do you say that?

10:36:14 19 MR. THOMAS: Well, because they have not produced  
10:36:16 20 any schematics, drawings or diagrams.

10:36:20 21 THE COURT: But you're -- what you're saying is  
10:36:22 22 that there has to be stuff and they haven't produced it.

10:36:27 23 MR. THOMAS: Yes.

10:36:28 24 THE COURT: And she's saying we've produced  
10:36:30 25 everything we're supposed to. What exactly would you like

10:36:33 1 me to do? She says I've complied -- as an officer of the  
10:36:40 2 Court, they sent me a request, I've complied with it.  
10:36:45 3 I've given them everything that we have that isn't  
10:36:47 4 available publicly.

10:36:49 5 What do you want me to tell them to do when they  
10:36:52 6 say they've given you everything they've been asked for?

10:36:55 7 MR. THOMAS: Well, we know they have drawings,  
10:36:58 8 diagrams --

10:36:58 9 THE COURT: No, no, no. No. I've heard -- this  
10:37:01 10 is -- I hate this. I get a lawyer comes in, says they  
10:37:05 11 have to have stuff they're not giving us. An officer of  
10:37:10 12 the Court has just said she's given you everything that  
10:37:12 13 they have that's relevant. What do you want me to do?  
10:37:16 14 Are you calling her a liar?

10:37:20 15 MR. THOMAS: Your Honor, I --

10:37:21 16 THE COURT: That's the only choice. Either she's  
10:37:25 17 lying when she represents that to me or she's given you --  
10:37:32 18 you know, now, is there a difference in Gen 1 and Gen 2  
10:37:37 19 that I'm not picking up?

10:37:38 20 MR. THOMAS: Yes, there is. There's two  
10:37:40 21 separates RFPs: One for Gen 1 one for Gen 2. We are  
10:37:43 22 specifically talking about Gen 1 right now. We haven't  
10:37:46 23 addressed Gen 2 yet.

10:37:48 24 THE COURT: Okay. On Gen 1, she said she's given  
10:37:51 25 you everything you're entitled to.

10:37:53 1 MR. THOMAS: Let me rephrase that, your Honor.

10:37:56 2 What she's saying she did -- Rhodium served a subpoena a

10:38:01 3 while ago on GRC and she's saying she produced some what

10:38:06 4 she believes are relevant documents that were responsive.

10:38:13 5 They're 237 pages. We issued a new subpoena because we

10:38:15 6 did not believe the production addressed the specific

10:38:18 7 documents that we required in order to defend ourselves

10:38:23 8 against the allegation of invalidity and obviousness as

10:38:29 9 well as non-infringing substitute. So we asked for --

10:38:32 10 we're asking for a different subpoena than the one that

10:38:34 11 she said she complied with.

10:38:36 12 THE COURT: Okay. Well, let me hear her on --

10:38:38 13 let me hear defense counsel on that.

10:38:40 14 MS. MOORE: Yes, your Honor.

10:38:41 15 I think they are one in the same both the

10:38:44 16 requests from Rhodium, which was to support, to my

10:38:47 17 knowledge, their invalidity defense. Having not seen

10:38:49 18 their invalidity contentions, I don't know that to be true

10:38:52 19 for a certainty, but I do believe that is what the purpose

10:38:55 20 of the request was and, therefore, that same information

10:38:58 21 is relevant here.

10:39:01 22 It seems to me that essentially what plaintiff is

10:39:04 23 asking for is something that they have access to already.

10:39:08 24 It's available on the internet. That's the whole point of

10:39:11 25 invalidity is, it has to be based on publicly available

10:39:14 1 information that is out for public consumption. They can  
10:39:18 2 simply go to GRC's website, get additional materials if  
10:39:21 3 they feel like it's insufficient. And to my knowledge,  
10:39:24 4 I'm not sure what it is that is insufficient other than  
10:39:28 5 thinking there must be other stuff out there, which I'm  
10:39:31 6 not aware of what that is.

10:39:32 7 And Midas purchased the very system they're  
10:39:35 8 talking about from GRC back in 2009, 2010. So if they  
10:39:40 9 want to see how it operates, they have access to the  
10:39:42 10 system itself, as well.

10:39:45 11 MR. THOMAS: Well, the system was modified. They  
10:39:48 12 continued to sell it and make improvements and  
10:39:50 13 modifications well after they sold us their products. And  
10:39:54 14 this issue for discovery's not just about invalidity, it's  
10:39:59 15 also about a non-infringing substitute. We need to get  
10:40:03 16 the specific drawings to ascertain whether or not these  
10:40:06 17 are non-infringing substitutes as alleged by Rhodium. So  
10:40:10 18 there are two aspects to this discovery dispute and  
10:40:13 19 arguing that we have access to stuff on the website does  
10:40:17 20 not answer this question at all.

10:40:18 21 THE COURT: She has said she's given you  
10:40:22 22 everything they have.

10:40:24 23 MR. THOMAS: No. She gave Rhodium what she had.  
10:40:26 24 She hasn't given us -- she gave us objections.

10:40:32 25 THE COURT: One more time from defense counsel.

10:40:34 1 With respect to Gen 1, have you provided everything that  
10:40:39 2 is called for in the discovery requests or subpoena, any  
10:40:44 3 subpoena that is not privileged or work product that is  
10:40:47 4 not accessible in the public?

10:40:50 5 MS. MOORE: And, your Honor, you were asking  
10:40:59 6 defense counsel. Not third-party GRC counsel, correct?

10:41:02 7 THE COURT: No. I was talking to you. I'm  
10:41:04 8 sorry.

10:41:04 9 MS. MOORE: Oh, I'm sorry. Yes. So we produced  
10:41:05 10 that information to Rhodium and then, my understanding is  
10:41:07 11 that by virtue of the discovery process, Rhodium has  
10:41:11 12 provided that information to plaintiff. I'm not sure  
10:41:15 13 what, if anything, has been held back as privileged within  
10:41:17 14 those materials, but we gave and turned over what we had  
10:41:22 15 to Rhodium.

10:41:22 16 THE COURT: So the plaintiff's fight is with  
10:41:25 17 Rhodium if there is one. That was a question for the  
10:41:32 18 plaintiff.

10:41:32 19 MR. THOMAS: Oh, I'm sorry, your Honor. Could  
10:41:35 20 you state that again?

10:41:36 21 THE COURT: So your fight is not with the third  
10:41:38 22 party, it's with Rhodium.

10:41:40 23 MR. THOMAS: Well, I don't see it that way. We  
10:41:42 24 issued our own subpoena and she --

10:41:44 25 THE COURT: Well, just -- okay. Counsel for the

10:41:50 1 third party has said they've given everything that's  
10:41:52 2 nonpublic to Rhodium. Deal with Rhodium. If Rhodium  
10:41:56 3 won't give it to you, I'll get involved then and if -- she  
10:42:01 4 said she has complied with your subpoena and that's -- I'm  
10:42:04 5 going to leave it there. I'm denying your request for  
10:42:06 6 relief.

10:42:07 7 With regard to the second issue, the Gen 2  
10:42:12 8 systems, tell me what it is you want there.

10:42:16 9 MR. THOMAS: Well, we want documents, diagrams,  
10:42:19 10 reports and drawings sufficient to show the operation of  
10:42:23 11 each version of the Gen 2 system because they are alleged  
10:42:27 12 to be non-infringing substitutes and we have -- the stuff  
10:42:32 13 that's available on their website does not have that  
10:42:35 14 detail for us to ascertain that.

10:42:37 15 THE COURT: Now, it's my understanding with  
10:42:38 16 regard to this -- the Gen 2 systems, nothing has been  
10:42:43 17 produced; is that correct?

10:42:47 18 MS. MOORE: Yes, your Honor. From GRC, nothing  
10:42:50 19 has been produced because it's all available on their  
10:42:52 20 website. There's hundreds and hundreds of pages of  
10:42:58 21 schematics, of pictures of the product. There's a  
10:43:01 22 20-minute video showing how the product works, showing it  
10:43:05 23 in setup and walking through how it works, pulling the  
10:43:09 24 components out of the submersed liquid in the tank.

10:43:13 25 THE COURT: Do you have any internal documents

10:43:14 1 that are more detailed than what's available publicly?

10:43:18 2 MS. MOORE: I would have to go back and check. I

10:43:21 3 don't believe so. The publicly available information is

10:43:24 4 extremely detailed and I'm not aware of any reason why any

10:43:29 5 of that is inadequate to the needs here. As you can see,

10:43:34 6 Midas is very antagonistic towards GRC, who is not a

10:43:38 7 member of this lawsuit and not in this fight, and they are

10:43:42 8 a direct competitor of my client and they are loathe to

10:43:45 9 turn over trade secrets and proprietary information to a

10:43:48 10 direct competitor on this basis, especially when

10:43:52 11 everything that Midas plaintiff should need is available

10:43:55 12 on GRC's website.

10:43:57 13 THE COURT: Well, and here's one other problem I

10:44:00 14 have with your position everything's public is I would

10:44:04 15 think but I don't know. I was never an engineer. But I

10:44:07 16 would think that when you all were designing these

10:44:10 17 products, there had to be design documents that were

10:44:13 18 involved that were not made public that would go to an

10:44:17 19 argument made by the plaintiff, right or wrong, of issues

10:44:22 20 of copying or some other argument they might have.

10:44:25 21 Are there no confidential design documents that

10:44:28 22 are not public that might be relevant to what the

10:44:31 23 plaintiff is asking for?

10:44:32 24 MS. MOORE: I can go back and check, your Honor,

10:44:34 25 to see what, if anything, related to the Gen 2 systems is

10:44:38 1 not available online. But as it relates to the particular  
10:44:42 2 patent, it's simply the tank and how it's shaped and what  
10:44:47 3 is contained within it. And again, all of that is  
10:44:50 4 available on GRC's website. As I said, there's at least  
10:44:54 5 one 20-minute video, there's webinars, there's product  
10:44:58 6 data sheets, there's specification data sheets, white  
10:45:02 7 papers, case studies, webinars.

10:45:04 8 I could go on and on and on. There's hundreds  
10:45:06 9 and hundreds of documents on these systems available on  
10:45:08 10 GRC's website. And so, I'm not clear what it is that  
10:45:10 11 they're looking for that isn't already in the public  
10:45:13 12 domain because the way that the product works is  
10:45:16 13 specifically shown in, for example, these videos and spec  
10:45:20 14 sheets, and it seems completely onerous and unduly  
10:45:25 15 burdensome for my client, again, who is a third party, to  
10:45:29 16 have to go and search and then, compare and see what's  
10:45:31 17 online, what do I need to still go find and then, turn it  
10:45:35 18 over to a direct competitor. Because these are the  
10:45:37 19 systems in place now that GRC is selling that are at issue  
10:45:42 20 with the Gen 2 system.

10:45:44 21 THE COURT: Let me hear from plaintiff's counsel.  
10:45:46 22 Is there a time window, a bracket of time window when --  
10:45:54 23 tell me the name of the third party again. Tell me the  
10:45:58 24 name of your client.

10:45:59 25 MS. MOORE: GRC.

10:46:00 1 THE COURT: Okay. GRC. Would the plaintiff tell  
10:46:03 2 me the time window when GRC would have -- they believe  
10:46:06 3 might have had design documents that would have been --  
10:46:11 4 that you want that are confidential that -- I've heard  
10:46:14 5 what is public. Is there a time window you think that  
10:46:17 6 would be relevant to what you're doing?

10:46:20 7 MR. THOMAS: Yeah, 2018 to 2020, your Honor.

10:46:23 8 THE COURT: Okay. So if I were to ask counsel  
10:46:26 9 for GRC to go back and check whether there are design  
10:46:31 10 documents that have been maintained and were kept  
10:46:35 11 confidential relating to this tank, I think it is, would  
10:46:39 12 that be something counsel for GRC could do?

10:46:43 13 MS. MOORE: Yes, your Honor. We'll go back and  
10:46:45 14 take a look.

10:46:45 15 THE COURT: Okay. And then, we have in place in  
10:46:48 16 my -- it's either Western District or my court, or both,  
10:46:53 17 we have a standing protective order that, you know, you  
10:46:55 18 all could enter and protect these things under. So I  
10:47:01 19 heard 2018 to 2020. If there are design documents  
10:47:05 20 relating to the accused tank of the defendant, then I'd  
10:47:10 21 like you to produce those under the protective order  
10:47:14 22 attorneys'-eyes-only, okay?

10:47:16 23 MR. THOMAS: Your Honor, could I make one more  
10:47:17 24 slight request on this?

10:47:19 25 THE COURT: Sure.

10:47:19 1 MR. THOMAS: That's really the same issue for me  
10:47:22 2 on Gen 1. We just want to see, get access to the design  
10:47:25 3 drawings. I know they're worried about confidentiality.  
10:47:29 4 We have an AEO provision in our protective order, which  
10:47:31 5 has already been entered. They can join in on that. I'm  
10:47:34 6 happy to mark anything they need to protect it from public  
10:47:38 7 dissemination. But the same issue for that, they have not  
10:47:43 8 produced those same design drawings if they have them for  
10:47:47 9 the Gen 1. So we'd ask that you would make that order  
10:47:50 10 applicable to both Gen 1 and Gen 2.

10:47:53 11 MS. MOORE: Your Honor, we have. We've produced  
10:47:57 12 the CAD drawings, rack assemblies, tack pump modules  
10:48:02 13 drawing files, a case study, let's see --

10:48:06 14 THE COURT: I'm good. I'm not going to amend my  
10:48:10 15 order on Gen 1. That's for Gen 2.

10:48:14 16 And then, I have a third issue. Documents that  
10:48:26 17 GRC has concerning Midas' systems. Do you know whether or  
10:48:33 18 not GRC has any of these documents?

10:48:36 19 MS. MOORE: I'm not aware of them having any of  
10:48:39 20 these documents. To the extent they do exist, which,  
10:48:42 21 again, I don't believe they do, the typical kinds of  
10:48:44 22 comparisons you would see are kind of the cost of the  
10:48:47 23 system and kind of the footprint and how much electricity  
10:48:51 24 it can save or provide in terms of power output. It's  
10:48:56 25 nothing that is an actual comparison of the features of the

10:48:59 1 tank from, for example, my client to anyone else in the  
10:49:03 2 industry. I'm not aware of anything like that.

10:49:06 3 THE COURT: I'll hear from the plaintiff what you  
10:49:10 4 want with respect to these documents.

10:49:13 5 MR. THOMAS: Yeah. You know, the documents that  
10:49:20 6 would -- these documents would be very relevant to whether  
10:49:26 7 or not it's a non-infringing market-acceptable substitute.  
10:49:28 8 So the comparisons between our product and theirs or  
10:49:34 9 analysis of our product and theirs would be very relevant  
10:49:36 10 to that.

10:49:39 11 THE COURT: A response to that.

10:49:40 12 MS. MOORE: Your Honor, we disagree. The size of  
10:49:44 13 one person's tank versus another has nothing to do with  
10:49:47 14 the patents-in-suit. Similarly the power output has  
10:49:51 15 nothing to do with the patents-in-suit. And therefore,  
10:49:55 16 again, to the extent any comparisons exist, which I'm not  
10:49:58 17 aware of any, those kinds of comparisons have absolutely  
10:50:02 18 nothing to do with the patented technology. And the RFP  
10:50:06 19 as it is written asks for everything that goes back to  
10:50:10 20 2009. So 13, 14 years worth of documents that are  
10:50:15 21 completely untethered to the technologies of the  
10:50:20 22 patents-in-suit, it's extremely onerous for us to go  
10:50:23 23 through this vast amount of information as a third party  
10:50:25 24 and there's no --

10:50:25 25 THE COURT: I'm good. I'm going to deny the

10:50:29 1 relief.

10:50:30 2 Issue No. 4, Midas moves to compel GRC to produce  
10:50:35 3 communications between GRC and Rhodium. Let me ask the  
10:50:49 4 plaintiff, why are you asking for these -- from GRC and  
10:50:53 5 not from the defendant, who is in the case?

10:51:00 6 MR. THOMAS: Your Honor, we have asked for the  
10:51:03 7 same information. We're not sure we got it all. We  
10:51:06 8 thought that it may be -- it's important stuff and I  
10:51:10 9 think --

10:51:10 10 THE COURT: Again, you think you may not have  
10:51:13 11 gotten it all. Have you asked -- have you asked Rhodium  
10:51:19 12 if you have all of it?

10:51:21 13 MR. THOMAS: Well, yes, we have. They said  
10:51:23 14 they've produced everything they have. Now, it's possible  
10:51:26 15 that GRC has things in their possession that Rhodium  
10:51:29 16 doesn't have.

10:51:32 17 THE COURT: I'm going to deny that request, as  
10:51:35 18 well.

10:51:35 19 That's all that I have here, I think. Is there  
10:51:38 20 anything else that I missed that you all asked me to work  
10:51:41 21 on?

10:51:43 22 MR. THOMAS: No, your Honor.

10:51:44 23 THE COURT: Anything else for GRC?

10:51:47 24 MS. MOORE: No, your Honor.

10:51:49 25 THE COURT: Okay. Have a good weekend. Thank

10:51:51 1 you.

10:51:51 2 MS. MOORE: Thank you.

10:51:54 3 MR. SMITH: Thank you, your Honor.

4 (Proceedings concluded.)

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3 | UNITED STATES DISTRICT COURT )

4 | WESTERN DISTRICT OF TEXAS )

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6 I, LILY I. REZNIK, Certified Realtime Reporter,  
7 Registered Merit Reporter, in my capacity as Official  
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15 WITNESS MY OFFICIAL HAND this the 6th day of October,  
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17

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